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ABSTRACT

This paper provides practical advice on reviewing and designing disciplinary procedures and is set in the context of incorporation of further education and sixth form colleges in England. Reasons are provided for having disciplinary rules, based on the Advisory Conciliation and Arbitration Service's (ACAS) Code of Practice. Relevant English employment legislation is discussed as are the methods of determining whether an employer has acted reasonably in dismissing an employee and the key principles of disciplinary procedure. Nine elements concerning the structure and content of college disciplinary procedure are addressed including discussions on implementation issues, assignment of responsibilities involving discipline, various disciplinary offenses and sanctions, time limits, representation during disciplinary actions, the use of disciplinary panels, and considerations when handling special disciplinary cases. Appendices include a sample of the ACAS' disciplinary procedure; a sample of a college-based disciplinary procedure; an example of a disciplinary code from a major industrial company; and a procedure for disciplining, suspending, and dismissing college staff. (GLR)

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Reviewing the college disciplinary procedure

The Staff College

R J Kedney and R Saunders

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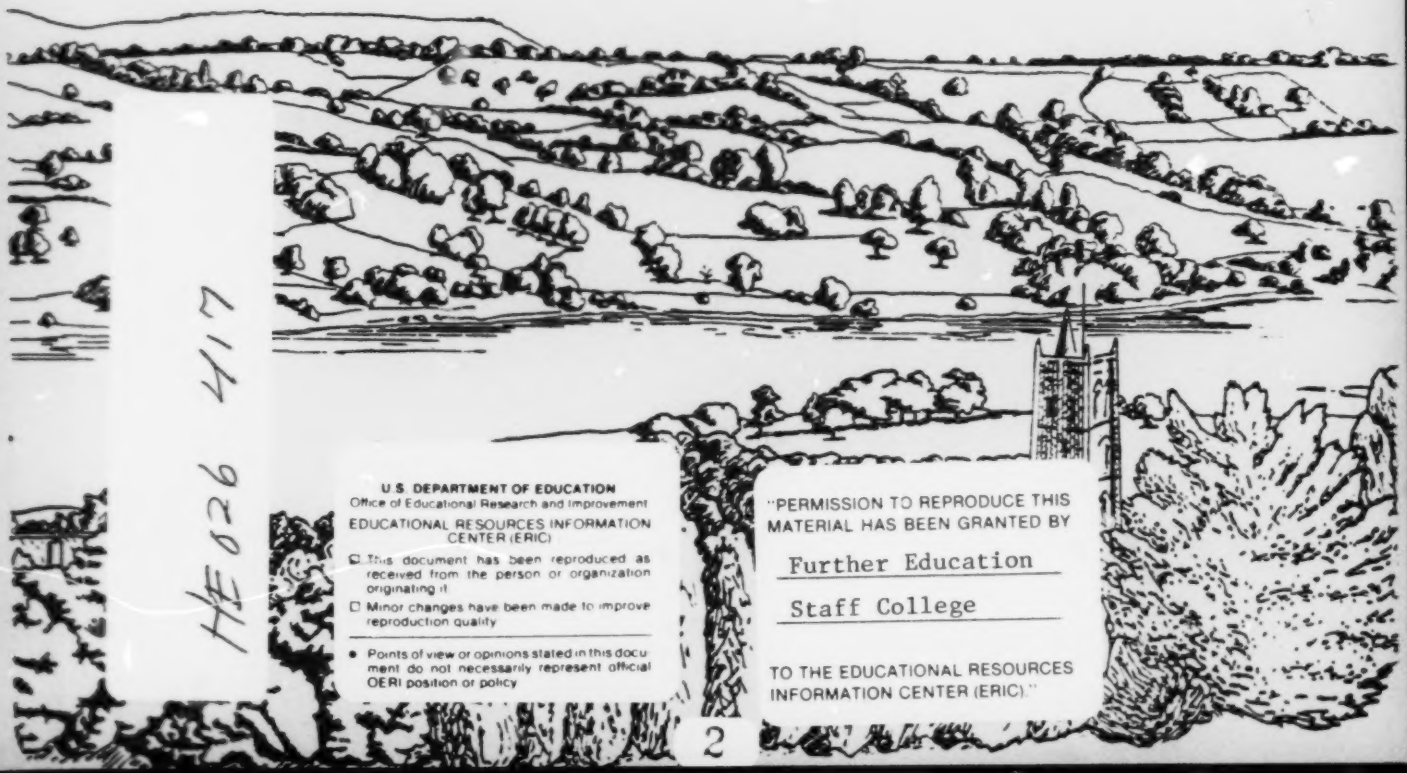

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Mendip Papers

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R J Kedney and R Saunders

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Introduction

All colleges have a disciplinary procedure: indeed many have more than one. They have their origins in discussions between the local authority and the recognised trade unions, but some may have been overhauled and significantly revised following the **Education Reform Act 1988** (ERA). How far these procedures meet the challenge of clarity as to their purpose, in addition to providing procedural guidance to managers who may be called to act upon them for the first time, is an open question. As colleges prepare to take up yet more responsibility on Vesting Day, it will be necessary to turn again to personnel matters and bring the college disciplinary procedure into line with incorporation.

At one level, a clear disciplinary procedure is needed to give technical support and advice to college managers when having to face cases of alleged misconduct. In so far as it helps to achieve fair and due process through what can be a difficult experience, it is of considerable importance. At another level, however, it is also part of the process of setting and exemplifying college values and developing best practice in terms of the relationships which underpin the culture of the college.

This Mendip Paper is intended to provide practical advice on reviewing a disciplinary procedure and is set in the context of the incorporation of further education and sixth form colleges. The authors draw on the work of conferences run by The Staff College - including the advice and comment of experienced managers - as well as their own experience in colleges, local authorities and the private sector. The authors also draw on the literature

of the field. The Paper uses a range of perspectives which inter-relate and overlap in providing practical advice and check lists of key issues for the design of college procedures.

Colleges are highly flexible and complex organisations which have at their centre the values, commitments and interactions of staff. Their purposes are increasingly finding overt form through policy or mission statements, which in part find practical expression through formal rules and procedures. But it can also be argued that standards are exemplified by the customs and practices of the college's everyday operations, and it is through the actions of staff that practical expression of value systems can be most strongly identified. Where clear policies are expressed and standards set, they need to be supported by consistent and reasonable management. Pious hopes and written procedures may offer valuable starting points and can be catalysts for change, but of themselves will not deliver policies. Yet without them as starting points there is little prospect of the professional standards needed in further education (FE) today.

In the past, colleges have operated using procedural frameworks presented by the local authority. These identified employees by type and by their recognised trade unions. Until ERA, and now the **Further and Higher Education Act 1992**, colleges had not been masters of their own destiny or been held responsible for labour relations. Indeed, the segregation was welcomed by some managers as they could more easily relate to notions of academic leadership than to hiring and firing roles. With delegation of so many of the employer's responsibilities to the college in 1988, there was set in train both an opportunity and a challenge in setting new procedures. The removal of the residual role of the local authority under incorporation is likely to be accompanied by moves towards decentralisation in industrial relations, a tendency that characterises much of the public sector at present. The outcome for colleges may be a new culture built on expectations of standards of professionalism, which will both guide and be influenced by the processes and outcomes of decisions which have to be taken in drawing up college personnel procedures.

Before moving on to specific issues that flow from the need to regulate discipline, it is well worth setting the task of writing a college procedure in context. The Institute of Personnel Management's **Code of professional conduct** identifies the wider processes as:

> that part of management concerned with people at work and with their relationships within that organisation. Its aim is to bring together into an effective organisation the men and women who make up that enterprise, enabling them to make their contribution to its success.

Section 148 of the Education Reform Act clearly placed the responsibility for staff conduct and discipline in colleges with the governing body. Furthermore, any action that lay within the powers of the local authority rather than the college was to be implemented at the request of the governors. The model articles accompanying the Department of Education and Science (DES) **Circular 9/88** stated that the principal:

> shall be responsible for the executive management of the college, including its financial management, internal organisation and discipline.

The draft regulations prepared for 1992 reflect the powers invested in the principal/director as the chief executive officer of the polytechnics and colleges of education. The governors, as non-executive directors given overall powers, make only specific decisions relating to the most senior posts: it is for management to manage.

The foundations lie in two key documents. The first, the **Employment Protection (Consolidation) Act 1978**, requires that a written statement of terms and conditions shall be given to all employees. This statement should describe any disciplinary rules which apply and the person to be consulted if an employee is dissatisfied with any disciplinary action. The second, the Advisory Conciliation and Arbitration Service's (ACAS) **Code of practice 1: disciplinary practice and procedures in employment** which came into force in June 1977 gives practical guidance. It is quoted in full as Appendix 1 in **Discipline at work: the ACAS advisory handbook** (1987); an invaluable booklet for all managers.

Both ACAS's **Code of practice** and **Discipline at work** make it plain that good employers are expected

to establish clear rules and to adopt and operate fair disciplinary procedures. The purpose of these procedures is to ensure reasonable orderliness in employee conduct and fair play between employer and employee in dealing with any problems which may arise. While a connotation of punishment is inevitably present, the primary aim in invoking the disciplinary procedure should be to seek improvement in the employee's behaviour. Only when this fails should the final sanction of dismissal be considered.

Disciplinary rules: setting standards

The ACAS code of practice suggests seven reasons for having disciplinary rules; these also provide key benchmarks when designing the procedure needed to deal with alleged breaches of acceptable conduct:

(i) to help ensure fairness and order in the treatment of individuals conducting industrial relations;

(ii) to assist an organisation to operate effectively;

(iii) to set standards of conduct at work and help to ensure that these are adhered to;

(iv) to provide a fair method of dealing with alleged failures to observe rules;

(v) to ensure that employees know what standards are expected of them;

(vi) to meet a legal requirement; and

(vii) because they become important in disputes about fairness or otherwise of decisions to dismiss.

Rules are also needed to regulate the safe performance of work as well as to reduce any danger of mishandling critical staff relationships.

The absence of satisfactory rules may result in undesirable precedents, bitterness and demotivation, with accusations of favouritism or victimisation when action eventually has to be taken. On the other hand, the development and application of rules can not only help to give guidance and direction but also confirm basic standards of behaviour and identify key values.

Given the diversity of types of posts and duties in a college it would not be possible, even if it were to be considered desirable, to catalogue all possible instances of misconduct. The **Encyclopedia of employment law and practice** (Walton, 1986) and the Local Authority Conditions of Service Advisory Board's **LACSAB handbook** (1987) both give examples of disciplinary rules which help to guide conduct and illustrate breaches which may be deemed misconduct and gross misconduct. It is important that the college procedure should state that any list of illustrations it uses is not complete and that the employer may take account of expectations arising from the employee's seniority, professional role and experience in considering individual charges.

In preparing any rules which relate to discipline there is firstly a need to question the necessity for each regulation. Some are required in law, while others are the choice of the employer and may be kept to basic expectations. These rules - like the formal disciplinary procedure itself - are both the product of, and part of the contribution to, the culture of the college. They should set the tone and give a framework of guidance which goes beyond the rigours of administration. Preparation of the rules is, therefore, worth considerable time and effort. It may be helpful on completing a draft not only to consider technical clarity and accuracy but also to seek advice as to how far the document meets the criteria outlined above.

Everyday issues such as honesty, good timekeeping and avoiding the use of foul language may seem self-evident in an educational institution. They sit alongside the expectation that staff will conform to and support college policies on such matters as equal opportunities or health and safety. Well-drafted disciplinary rules on these and other matters can help to give guidance in advance to all staff, and assistance and support to junior and middle managers in maintaining standards.

Before addressing directly specific issues of design, the following sections review aspects of relevant legislation and what has to be the basic test of its application - the possible dismissal of a member of staff of a college, including the potential need to demonstrate reasonableness to an industrial tribunal. It is essential that disciplinary action always takes account of the legal framework in which it is set, and of the factors which tribunals are likely to consider in deciding unfair dismissal cases

Relevant employment legislation

The legal requirement for a disciplinary procedure is implied in the **Employment Protection (Consolidation) Act 1978** where it requires an employer to give an employee a written statement of terms and conditions within 13 weeks of commencement of employment. Included in this statement must be details of the disciplinary and grievance procedures or details of where they may be found. Perhaps equally significant is the use of common sense, as the experience of trying to handle a case of misconduct which can no longer be condoned or ignored without a clear and known procedure is not something any manager would wish to repeat.

Under the provisions of ERA, the governing body became responsible for 'the regulation of conduct in relation to the staff of an institution'. The **Further and Higher Education Act 1992** has completed the process of delegation by removing the residual powers of the local education authority (LEA) so that the chief education officer is no longer the automatic choice for professional advice and the LEA will no longer act on instruction in processing the dismissal of a member of the college's staff.

The sequence of hearing and appeal can be lengthy and complicated. If, following a hearing of an allegation of gross misconduct, the college decides on dismissal, an individual may appeal as provided for by the procedure. If the original decision is upheld, the individual may then refer the matter to an industrial tribunal. If this further, external right of appeal falls within the scope of the tribunal, it will hear the submissions of both parties and will make a legally binding decision. In doing so it will hear each individual case on its merits: whilst previous decisions may be used as guidance, they do not form precedent. Due to continuous change as a result of hearings in tribunals, the appeal tribunal, the Court of Appeal, the House of Lords and on occasions the European Court of Justice, any doubts relating to individual cases should be referred to personnel specialists for advice and guidance.

In reviewing the college procedure, reference should be made to the ACAS **Code of practice 1: Disciplinary practice and procedures in employment** and **Discipline at work: the ACAS advisory handbook** (which includes the Code). Whilst they are not statutory documents, they are nevertheless regarded as giving clear and sound advice. As the **Employment Protection Act 1975** stated, the Code is admissible in evidence before a tribunal and any provision of the Code that is regarded as relevant by the tribunal shall be taken into account. Further, **Discipline at work** gives clear guidance to any manager and should be set alongside the college procedure as part of its basic documentation.

Determining a fair dismissal

The technical issues of dismissal and the operation of industrial tribunals may need to be addressed from time to time but lie outside the specific focus of this Paper. The decision to dismiss on grounds of gross misconduct must, however, underpin any review of the college's procedure. Furthermore, there are important ground rules which have general applicability to the design and use of a disciplinary procedure. For example, industrial tribunal findings have established a number of benchmarks which test whether the employer has acted reasonably. These include:

1. having a known procedure;
2. following it at every stage;
3. carrying out adequate investigation at each stage;
4. assembling and giving the findings in good time;
5. giving clear notice of any formal hearing and its possible consequences; and
6. allowing the employee to state his/her case before any decision is reached.

A second helpful set of guidelines arising from the deliberations of the industrial tribunals and the appeals machinery relate to the point of decision. They are most clearly tested when dismissal is to be considered but again can apply at the point of decision in any disciplinary hearing. They give four tests of reasonableness in the following terms.

1. Does the employer reasonably believe the employee committed the misconduct?

2. Is that belief based on reasonable grounds?

3. Are those reasonable grounds the result of as much investigation as is feasible in the circumstances?

4. Is dismissal, in the circumstances, a reasonable penalty to impose?

Dismissal relates to a charge or charges of gross misconduct, seen as misconduct serious enough to destroy the employment contract and to make any further working relationship and trust impossible. Tribunals are interested in the judgement of the employer, not the guilt of the employed. The dismissal decision has to be based on a reasonable belief, which can be supported and be seen to be fair, but not necessarily proven beyond all reasonable doubt. Indeed, dismissal decisions have been upheld in tribunals where innocence of criminal activity has subsequently been established. Discipline concerns the relationship between employer and employee: it concerns expectations and standards and fair processes for handling any issues that arise.

Key principles

The Code of Practice included in **Discipline at work: the ACAS advisory handbook** specifies a number of essential features of a disciplinary procedure:

- that the procedure should be in writing;
- it should specify to whom it applies;
- it should provide for matters to be dealt with speedily;
- it should indicate the disciplinary actions which may be taken;
- it should identify the levels of management which have the authority to take various forms of action;
- it should provide for individuals to be informed of the complaints made against them and be given an opportunity to state their case;
- it should provide for individuals to have the right to be accompanied;
- it should ensure that other than for cases of gross misconduct individuals are not dismissed for the first offence;
- it should ensure that disciplinary action is not taken until the case has been investigated;
- it should ensure that individuals are given an explanation for any penalty imposed;
- it should provide a right of appeal and specify the procedure to be followed.

Reviewing the college procedure

1. Structure and content

In his book **Industrial relations** (1987), G D Green details a series of elements that can provide a technical framework for reviewing any procedure. In all it covers 13 elements but only nine of them are applicable here.

(1) **Preamble/purpose/status** - should cover who are the parties to the document, the status of their discussions and the date of the procedure. An interim procedure may sometimes be adopted while discussion with the trade unions continues in order to determine the final wording.

(2) **Groups/units covered** - the procedure will relate to the college but it will be necessary to determine whether one or more such documents will be adopted. It has been commonplace for local authorities to have three or more procedures relating to the different major groups of employees and their trade unions. A decision to regard all staff equally through a single status policy means that a policy decision will need to be made and should be stated. Furthermore, should any variations be made to meet the particular circumstances of groups of staff or individual sites they should also be stated.

(3) **Coverage** - the procedure should state what it covers and any related provisions - e.g. capability - need then to be dealt with in parallel statements.

(4) **Stages** - discipline is generally regarded as a process with stages which may range from the informal warning, through the formal warning and the final warning to consideration of dismissal on grounds of gross misconduct. The entry point into the procedure will have to be determined with regard to the seriousness of the case and not in terms of any other sequence. It is thus possible for the first charge to be one of gross misconduct should the issue warrant it, and this should be indicated. The procedure should set down who will deal with the investigation and lay the charge, and who will hear the statements and any appeal at each stage. The principle of natural justice requires clear separation and independence of roles. In general it is a sound principle for issues to be dealt with as close to the point of origin as is reasonable starting with the next-in-line manager.

(5) **Time limits** - failure to act promptly on a disciplinary matter once it is known to management may be argued as condoning an action. Procedures should not be overlong and clear time limits should be stated for each stage, including a set period allowed for appeal, though by agreement set limits may be varied in individual circumstances to meet the interests of justice and reasonableness. Time limits in the context of a record of the disciplinary decision are considered later in this Paper.

(6) **Appeals** - the procedure should make clear how appeals against disciplinary action at each level are to be handled, and by whom. It is common for appeals to be to the next level in the hierarchy. The appeal can take the form of consideration of specific issues only or be a re-hearing before a different body.

(7) **Sanctions** - a range of options can be allowed but some may need a renegotiation of existing contracts of employment. Examples are likely to be the adoption of a financial fine other than the withholding of an increment, demotion or disciplinary transfer to another post, including a lower graded one.

(8) **Records** - including minutes or notes of the hearings - should clearly be confidential but need to be kept in case of appeal or an industrial tribunal hearing in the case of dismissal. Notification of decisions should be confirmed in writing and should refer to the right of appeal and the timescale and means of requesting such a hearing.

(9) **Alteration or termination** - of the procedure may occur from time to time (particularly the former) as experience is gained. It is useful to identify in advance how such matters should be dealt with in terms of both consultation and communication to staff.

Lists such as those given above can be daunting and tend to cause attention to focus on the technical aspects of designing a procedure. Several stages of discussion and drafting can be expected but may prove invaluable. To support such review and to provide illustrations this Paper includes several Appendices which give a number of examples of disciplinary procedures selected because of differences of style. All have been designed and used in the working environment. None can cope with every conceivable eventuality and exceptions will need to be met by clear adherence to underlying principles.

Testing of the drafting is worth consideration by giving the draft procedure to a third party who has taken no part in its design and has no access to its authors. They should be asked to see if both its technical aspects and the desired spirit and intentions come through. One way of doing this, if it can be arranged, is through either role play as an internal training exercise or by its use as a case study run with middle managers of a sister college.

2. A check list of key issues

The catalogue of issues addressed here cannot be comprehensive, nor can individual responses fit all circumstances. Rather, an attempt is made to highlight what are likely to be relevant questions and to explore possible options. The position determined by any college must be of its own choice and should reflect what it is seeking to achieve.

Over 20 issues are identified, and in some instances advice and comment is given. Further sources of information and comment are listed under **Key readings and references**. The topics range from issues of broad strategy to specific detail, such as disciplinary action involving trade union officials or staff on probation. Where possible they are clustered in groups under broad headings.

Implementation issues

(1) *Timing:*
discipline is but one of a series of matters where college policies have to be written or re-written. An overview and planned calendar which identifies the disciplinary procedure in a context and time may be helpful to all involved.

(2) *Number of procedures:*
the college can expect to have inherited a series of disciplinary procedures from its local authority. It may be that individual trade unions will or will already have put forward proposals relating only to their members. College governors and managers will need to decide whether to adopt one procedure for all staff or several, and in so doing weigh the knock-on effects. There is a growing tendency among major employers to move towards single status practices which extend beyond formal procedures to broader policies. The decision can thus be seen to set a precedent, and for some at least indicate the ways in which the employer views its employees. There may, however, be good reasons for more than one procedure other than inheritance and inertia.

(3) *The ACAS model:*
Discipline at work: the ACAS advisory handbook gives examples of procedures and in considering them it should be recognised that all colleges are classified as large employers for procedural purposes. The ACAS model varies in some respects from the Silver Book but agreements reached by local authorities for APT and C and manual staff often mirror it more closely. It can provide a fresh starting point for review and be amended and added to as necessary.

(4) *Length:*
a decision has to be made and held to in terms of style - particularly with regard to length - otherwise a procedure can grow endlessly as individual issues are addressed on a one-by-one basis. A short procedure can be both more readable and more flexible. It is likely to need support with in-depth training for managers in it use. A longer document may address more issues directly through cross referencing and selective repetition. But it can also be more difficult to read and follow. No procedure can identify and respond to all possible issues in advance, and length for its own sake is likely to achieve little.

(5) *Consultation or negotiation:*
clearly, in seeking the views of staff and their representatives every reasonable endeavour has to be made to seek agreement. It is important at the outset to define whether the process is one of consultation or negotiation. For the former, management seeks advice with an open and receptive mind but ultimately views discipline as its responsibility and the procedure has to be a management statement. If it is a matter for negotiation, then power sharing is accepted. If the latter position is considered it may be appropriate to seek the views of all of the recognised trade unions as to whether they all wish to be bound by a joint agreement, and to decide how to deal with any fundamental points of failure to agree should they arise.

In the case of consultation, management recognises the staff position but nevertheless retains the right to determine the outcome. In negotiation, unless agreement is reached, the options are stalemate (which is clearly unacceptable), management having to decide whether to act unilaterally, or referral of the issue to a third party who will be charged with conciliation. Much will clearly depend on the causes of disagreement, but it may in due course fall to a tribunal to determine reasonableness or otherwise of the college's actions.

By identifying and clarifying such issues at an early stage, it is possible that difficulties will not arise. But should they occur,

heated debate and disagreement make the search for means of resolution all the more problematic. It is, therefore, important from the outset that college managers recognise and respond to areas of disagreement as early and as effectively as possible.

Delegation and decision-taking

(6) *Decision-takers:*
it is essential that the procedure sets out who does what in both general and specific terms. A three by three matrix can be used here in order to help clarify options (see **Figure 1**). One axis identifies the level of charge and potential penalty, and the other the three levels of investigation, hearing and appeal. The rules of natural justice require that participation in decision-making at one level precludes similar involvement at another. It is thus not possible for an officer who may hear the case to take part in the investigation, determination and presentation of the charges, or to consider any appeal.

The concept of tackling problems as close to source as possible is important, as is ensuring that the scale of response reflects the scale of the problem. In the past an over-formal procedure, the tendency to involve solicitors at an early stage and entering at a high level on the grounds that the charge can always be reduced but not increased, have tended to move practice away from these original intentions. It is an open question as to how such dangers can be addressed at the stage of writing procedures as well as through training and briefing and any later monitoring. Vigilance is likely to be called for.

(7) *Extended day/year/site working:*
consideration will need to be given to the need to identify responsible officers for

Figure 1: Identifying the decision-takers

STAGE		LEVEL OF CHARGE: Misconduct	Serious misconduct	Gross misconduct
		OUTCOME: Written/oral warning	Final/written warning	Dismissal
INVESTIGATION	Senior staff			
	Other staff			
HEARING	Senior staff			
	Other staff			
APPEAL	Senior staff			
	Other staff			

cover for the extended college day and year, and for multi- and off-site working. This is likely to be most important in defining who has powers to suspend a member of staff pending an investigation. By making it clear in writing that suspension does not presume guilt and is not a disciplinary sanction, but should rather be seen as a cooling off period and/or a means of facilitating investigation, it does not necessarily bind the suspending officer to act as the investigator and presenting officer.

Disciplinary offences

(8) *Gross misconduct:*
this is defined as misconduct serious enough to destroy the employment contract and to make any further working relationship and trust impossible. Account clearly has to be taken of the nature of that relationship but it should be possible to illustrate the procedure with examples which could lead to charges of gross misconduct in a college environment. It will, however, be necessary to make it quite clear in writing that any such list is illustrative and not exhaustive.

(9) *Interpretation:*
offences which fundamentally breach the contract for an employee may relate to particular duties, seniority and/or responsibility. They need not necessarily apply at the same level of severity to another member of the college staff employed under different circumstances. The procedure should state if this view of differentiation is adopted.

(10) *Particular circumstances:*
similarly, if specific account is to be taken of particular circumstances - for example an employee's responsibilities for supervision in relation to health and safety of students in gymnasia, laboratories or workshops - it may be helpful to identify this point as an illustration.

Sanctions

(11) *Options:*
the maxim of fitting the punishment to the deed depends on a range of outcomes and these need to be explored in a disciplinary procedure so that the outcomes can be known in advance. The tendency in colleges currently is to have only a limited choice as existing contracts of employment may be thought to exclude a range of possible outcomes. Rather than force the choice to a conclusion which is less than suitable, variations may be reached through either individual or collective agreements on such matters as demotion or financial fines as alternatives to dismissal. Negotiation of any revision to the contract of employment should be undertaken in good time, i.e. prior to any hearing, rather than as an outcome of any particular deliberations.

Time limits

(12) *Recorded decisions:*
the procedure needs to be explicit as to the period for which an outcome will be held on an individual's personnel record. This can be as simple and mechanistic as six months or a year for the first warning or it can be varied, if the procedure so allows, to fit the circumstances. If the latter is adopted consideration can be given to either a general statement of advice or a general rule. Both approaches can recognise that no closing date may be the most appropriate in some circumstances. Tribunals in the past have recognised that even when a warning has been removed from the employee's personnel record, so that it cannot be used to justify entering the procedure at a higher stage, it is neither possible nor reasonable to expect it to be totally expunged from the memory. It can, therefore, be taken into account in determining the severity of the penalty to be applied.

Representation

(13) *Accompaniment:*
The ACAS Code in **Discipline at work** refers to 'a trade union representative or work place colleague', not to a friend. The practice of using legal representation under the terms of some procedures has thus led to a change in the nature of the disciplinary hearing. For instance, in one institution there has been a return to the ACAS wording for all stages other than the single appeal against dismissal where the choice of a

legal representative other than a trade union officer or a work place colleague is accepted. Whatever the intentions, they should be clearly stated.

(14) *Advisers:*
DES **Circular 9/88** made specific reference to the role of the chief education officer in relation to discipline in that he/she is required to advise in the case of hearings of charges which may lead to dismissal of senior staff as defined by the articles of college government. The governors will need to consider where they look for such professional advice in future, as will college managers hearing any disciplinary charges of appeals relating to staff below the most senior grades. Similarly, in presenting their case both sides may wish to call on advisers and it may be helpful if the disciplinary procedure recognised this. It may be useful to include the mechanism for determining numbers through either the written procedure or by the chair's decision.

Panels

(15) *The disciplinary authority:*
this can consist of a panel of one or more at both the hearing and the appeal stages, and can be formed of college officers and/or governors. In industry and commerce, hearings by an individual are commonplace but in the public sector larger groupings are often used. The industrial tribunal as the external body in cases of dismissal consists of three, as do the hearings of any higher appeals. The crucial point for many is the determination of who is empowered to dismiss a member of staff. Here again, colleges have traditionally differed from the majority of employers in that until ERA it was not generally the principal or one of his/her senior staff. Completion of the grid used above will address these issues directly.

Special cases

(16) *Trade union officials:*
the procedure should identify how action should be dealt with in the case of trade union officials as it could otherwise be construed as an attack on the union. For example, any action beyond an informal warning could incorporate notification at the outset to the full-time official.

(17) *Probationers:*
it is likely to be necessary to distinguish between unsatisfactory performance of duties due to competence, and wilful misconduct. The former should be dealt with outside this procedure.

(18) *Criminal charges:*
an employee should not be dismissed or otherwise disciplined simply because he/she has committed a criminal offence. Fundamental to any consideration has to be the relationship to continued employment and there should be adequate investigation and consideration using the procedures. There is no requirement to await the outcome of any court hearing, nor is a finding of not guilty of a criminal offence a defence against disciplinary action as the two issues can be considered quite separately.

(19) *Activity off the college premises:*
where an action committed by an employee off the college premises in his or her non-working time is considered to prejudice the good name, reputation and/or proper fulfilment of the employee's duties it may again be judged proper cause for disciplinary action.

(20) *Anonymous allegations:*
need to be considered individually but if the allegations are of a serious nature an investigation may be warranted. The individual member of staff should be informed and be advised that he/she may wish to be accompanied at any subsequent interview. Clearly, care must be taken to avoid linking anonymous allegations with the opinions formed through proper investigation which has been carried out with an open mind. Careful consideration will need to be given to any formal link between this issue and a written procedure.

(21) *Competitive tendering:*
staff are now based in the college for much or all of their working time but may be employed by agencies other than the local authority. Some may in effect be detached

workers without immediate line supervisors on site. DES **Circular 9/88** covered a number of aspects of employing such staff, as in paragraph 47 which stated that:

> Many staff who are treated as part of the Direct Labour Organisation (DLO) for accounting purposes will form part of the non-teaching staff of the colleges as far as selection for appointment, grading and duties are concerned, and will be under the day-to-day management control of the principal in the same way as other staff.

Post-incorporation staff will either be employees of the college or of a contractor. The position of college management *vis à vis* the latter will need to be addressed in the specification of the tender and in a term of the contract. The disciplinary procedure and its application will need to recognise this. Staff employed by other bodies will have the disciplinary arrangements set down in the terms of their contract.

Future changes

(22) *Monitoring and review:*
experience can be expected to highlight the need for fine tuning as lessons are learnt. The setting in motion of procedure monitoring to help support consistency, and the adoption of 'a stitch in time' style will also tend to throw up revisions and it may be helpful to record both intentions and the mechanisms for putting forward and discussing changes in the procedure.

Collective agreements

It is a simple matter to enter into the process which can lead to collective agreements; it is only necessary to propose or accept the other party's request for negotiation on the drafting of an agreement. Once prepared, the document will bind both sides to its use and to agreement on subsequent changes. However, it is possible that in the area of discipline and potential dismissal, either the managers or the recognised trade unions (or both) may prefer to adopt consultation, leaving some subsequent measure of freedom to revise or indeed to criticise the procedure when defending a position. It is, therefore, wise to be clear at the outset as to the intentions and position adopted and to ensure that if both parties regard themselves bound by the procedure and its operation that this is stated.

Circumstances may arise where a college has adopted a procedure largely drawn up by others or, in the light of experience, decided to undertake a major review. For example, it may be part of a wider college policy to move to a single procedure for all staff instead of drawing on three or more separate documents. If the existing provisions are the outcome of consultation, then college management is free to proceed and to decide whether to consult afresh or enter into negotiations with all of the recognised trade unions. On the other hand, if it is accepted that one or more of the existing agreements was the product of negotiation, and thus is a collective agreement, it will be necessary to adopt a different approach.

Where both parties to the collective agreement accept its replacement with a new procedure which may not be a collective agreement, the process is clear and simple. If this is not the position, but the existing agreement has a clause permitting either party to give the stated period of notice of withdrawal, then a course of action is clear. Not all inherited collective agreements make such a provision as they may expect both parties to accept its cessation. This may of course be achieved by the quality of the argument but accepting the worst case scenario, it has to be recognised that on balance one party could see greater advantage in retaining the present agreement and refuse to accept change. Ultimately only two choices are open:

- the original agreement stands, notwithstanding its faults or the wider policy implications; or

- the employer serves notice of termination of contract with the immediate offer of new employment with all the existing terms and conditions other than the collective agreement.

This will be emotive but given this option, both the party pressing for change and those unwilling to accept it must have very strong grounds for doing so.

Sources of advice

A variety of sources is available, ranging from printed materials, including the use of standard tribunal references, to the purchase of advice, consultancy and management training. Traditionally, the college as part of the local authority has been required to use the council's personnel and education officers to fulfil the latter roles. Under the terms of the Scheme of Delegation it is likely that many colleges will have been charged, at least in the short term, for some measure of the authority's services. Following incorporation, managers - like the appellant - are free to seek such advice as the college sees fit from whoever it regards as appropriate. Consultants specialising in personnel matters offer their services, including some who specialise in public/college sectors. Specifically in the context of education, the colleges' Employers Forum, The Staff College, and the Local Government Management Board give assistance and advice to employers, as will a number of specialist firms of consultants and solicitors.

Communication and training

No matter how much care and attention has gone into the design and production of a disciplinary procedure, its real test of worth will only come with those middle managers and officers charged with its day by day implementation. Those involved in the design of the procedure will have built up a familiarity not shared by others who will be the key to its delivery. Disciplinary action is not a pleasant prospect at the best of times and attitudes towards involvement in its operation are often strong. The circulation of technical and possibly lengthy documentation through the internal post with an exhortation to read, inwardly digest and keep safe for future use is unlikely to be the most effective form of dissemination.

Different communication strategies will be needed for different groups of staff. For example, circulation to all members of the college staff with a letter, or a covering analysis of the key points to be noted, may be one approach to the distribution of a new procedure. It could be supported by an open meeting and/or inclusion in the agenda for staff meetings where its purpose and timing can be outlined alongside the key aspects of the expectations of employees. Managers will need to decide, when revising or drawing up disciplinary rules and procedures, whether to consult in advance or to inform staff afterwards of the changes.

Middle managers identified in the procedure as being responsible officers will need to be briefed as to their role and on how to use the provisions. Role play exercises, with or without video playback, are invaluable in developing skills and judgement. Some measure of realism may be effected through joint provision with one or more partner colleges. Without such follow-up the procedure may stand untested until a serious case of misconduct is alleged, which would do little to contribute to the culture of good relations and the setting of professional standards.

Conclusion

It is possibly over-simplistic to argue that in drafting and implementing a disciplinary procedure its authors should endeavour to plan to treat others as they would wish themselves to be treated, but perhaps not too much so. Often the focus of attention at the outset is understandably on issues of retribution rather than the pursuit of improvement and raising of standards, but by far the greater part of a well regulated system will lie in its shared values, peer group influence and the use of advice and informal warnings. To take such a view is not to deny that from time to time formal and sometimes more difficult decisions must be made. A break point in continuity, such as the introduction of a disciplinary procedure, can draw attention to the need for action. Any major institution without a measure of formal disciplinary action may need to question this absence of procedure, particularly so in a period of rapid change when standards may need to be reviewed.

Key readings and references

For every manager and supervisor:

Advisory Conciliation and Arbitration Service (1987) **Discipline at work: the ACAS advisory handbook**. ACAS (available free of charge from Regional Offices)

The college articles of government

The college disciplinary procedure and rules

Key reference works

Croner's guide to discipline. (1988) rev. ed. Croner Publications Ltd.

Local Authority Conditions of Service Advisory Board (1987) **Employee relations handbook.** LACSAB [now Local Government Management Board]

Walton, Frank ed. (1986) **Encyclopedia of employment law and practice**. Professional Publishing (updated constantly)

Other references

Department of Education and Science (1988) **Education Reform Act 1988: local management of further and higher education colleges. Planning and delegation schemes and articles of government.** Circular 9/88 HMSO

Green, G D (1987) **Industrial relations.** 2nd ed. Pitman

Industrial Society (1977) **Effective discipline**. The Industrial Society

Institute of Personnel Management (n.d.) **The IPM code of professional conduct: the IPM Codes of Practice.** IPM

Knell, Anne ed. (1991) (updated) **The personnel manager's factbook**. Professional Publishing Ltd.

Rubenstein, M and Frost, Y (1992) **Unfair dismissal guide: a guide to relevant case law.** 10th ed. Industrial Relations Services

Torrington, D and Hall, L (1987) **Personnel management: a new approach.** Prentice Hall

Acts of Parliament

Education Reform Act 1988. C40 HMSO

Employment Protection Act 1975. C71 HMSO

Employment Protection (Consolidation) Act 1978. C44 HMSO

Further and Higher Education Act 1992. C13 HMSO

Appendices

Colleges will have access to the provisions of national consultations through the Purple, Silver and White Books and will have examples of local procedures to hand. Four further procedures are offered here as a resource - not as models of good practice which are instantly transferable, but rather as resources to be drawn from in terms of their coverage and phraseology. Responses are likely to range from selection of sections, to rejection which is nonetheless helpful in itself in formulating ideas and responses. The processes of critical reading, drafting and debate are likely to prove highly significant and should be used as constructively as possible.

The first example (Appendix 1) is taken from **Discipline at work: the ACAS advisory handbook** and as such has provided a starting point for employers in both the private and the public sector for a number of years. Appendix 2 gives a college-based example used at The Staff College for training purposes; it draws heavily on the ACAS model. Appendix 3 is a brief procedure taken from a major industrial company, while the fourth example (Appendix 4) is a procedure written originally with substantive advice from the National Association for Teachers in Further and Higher Education (NATFHE) for use with college lecturers. It has subsequently been revised to fit the post-ERA context. It differs in that it is somewhat more detailed in its approach but does not by any means address all of the issues explored here.

Following on from the sample procedures, Appendix 5 is a diagrammatic representation taken from Torrington and Hall's **Personnel management: a new approach** (1987) which, suitably adapted, can serve as a useful contribution to any procedure. Finally, Appendix 6 provides a useful summary checklist to assist with the reviewing procedure.

APPENDIX 1: Sample disciplinary procedure, ACAS

This example, which appears as *Appendix 3 - Example 1 (any organisation)* in **Discipline at work: the ACAS advisory handbook**, is reproduced here by kind permission of ACAS.

(1) Purpose and scope

This procedure is designed to help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance. The company rule (a copy of which is displayed in the office) and this procedure apply to all employees. The aim is to ensure consistent and fair treatment for all.

(2) Principles

a) No disciplinary action will be taken against an employee until the case has been fully investigated.

b) At every stage in the procedure the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made.

c) At all stages the employee will have the right to be accompanied by a shop steward, employee representative or work colleague during the disciplinary interview.

d) No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty will be dismissal without notice or payment in lieu of notice.

e) An employee will have the right to appeal against any disciplinary penalty imposed.

f) The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.

(3) The procedure

Minor faults will be dealt with informally but where the matter is more serious the following procedure will be used:

Stage 1 - Oral warning

If conduct or performance does not meet acceptable standards the employee will normally be given a formal ORAL WARNING. He or she will be advised of the reason for the warning, that it is the first stage of the disciplinary procedure and of his or her right of appeal. A brief note of the oral warning will be kept but it will be spent after . . . . . months, subject to satisfactory conduct and performance.

Stage 2 - Written warning

If the offence is a serious one, or if a further offence occurs, a WRITTEN WARNING will be given to the employee by the supervisor. This will give details of the complaint, the improvement required and the timescale. It will warn that action under Stage 3 will be considered if there is no satisfactory improvement and will advise of the right of appeal. A copy of this written warning will be kept by the supervisor but it will be disregarded for disciplinary purposes after . . . . months subject to satisfactory conduct and performance.

Stage 3 - Final written warning or disciplinary suspension

If there is still a failure to improve conduct or performance is still unsatisfactory, or if the misconduct is sufficiently serious to warrant only one written warning but insufficiently serious to justify dismissal (in effect both first and final written warning), a FINAL WRITTEN WARNING will normally be given to the employee. This will give details of the complaint, will warn that dismissal will result if there is no satisfactory improvement and will advise of the right of appeal. A copy of this final written warning will be kept by the supervisor but it will be spent after . . . . months (in exceptional cases the period may be longer) subject to satisfactory conduct and performance.

Alternatively, consideration will be given to imposing a penalty of a disciplinary suspension without pay for up to a maximum of five working days.

Stage 4 - Dismissal

If conduct or performance is still unsatisfactory and the employee still fails to reach the prescribed standards, DISMISSAL will normally result. Only the appropriate senior manager can take the decision to dismiss. The employee will be provided, as soon as reasonably practicable, with written reasons for dismissal, the date on which employment will terminate and the right of appeal.

(4) Gross misconduct

The following list provides examples of offences which are normally regarded as gross misconduct:

- theft, fraud, deliberate falsification of records;
- fighting, assault on another person;
- deliberate damage to company property;
- serious incapability through alcohol or being under the influence of illegal drugs;
- serious negligence which causes unacceptable loss, damage or injury;
- serious act of insubordination.

If you are accused of an act of gross misconduct, you may be suspended from work on full pay, normally for no more than five working days, while the company investigates the alleged offence. If, on completion of the investigation and the full disciplinary procedure, the company is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice.

(5) Appeals

An employee who wishes to appeal against a disciplinary decision should inform . . . . . within two working days. The senior manager will hear all appeals and his/her decision is final. At the appeal any disciplinary penalty imposed will be reviewed but it cannot be increased.

APPENDIX 2: Countdown college: disciplinary procedure

This sample disciplinary procedure is a college-based example which has been used at The Staff College for training purposes. It draws on the ACAS model reproduced as Appendix 1.

1. Purpose and scope

This procedure is designed to help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance. The procedures outlined in this document apply to all employees and the aim is to ensure consistent and fair treatment for all.

2. Principles

a) No disciplinary action will be taken against an employee until the case has been fully investigated.

b) At every stage of the procedure the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made.

c) At all stages the employee will have the right to be accompanied by a shop steward, employee representative or work colleague during the disciplinary interview.

d) No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty will be dismissal without notice or payment in lieu of notice.

e) An employee will have the right to appeal against any disciplinary penalty imposed.

f) The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.

3. The procedure

Minor faults will be dealt with informally but where the matter is more serious the following procedure will be used:

Stage 1 - Oral warning

If conduct or performance does not meet acceptable standards the employee will normally be given a formal ORAL WARNING. He or she will be advised of the reason for the warning, that it is the first stage of the disciplinary procedure and of his or her right of appeal. A brief note of the oral warning will be kept but it will be spent after a minimum of six months, subject to satisfactory conduct and performance.

Stage 2 - Written warning

If the offence is a serious one, or if a further offence occurs, a WRITTEN WARNING will be given to the employee by the head of department. This will give details of the complaint, the improvement required and the timescale.

It will warn that action under Stage 3 will be considered if there is no satisfactory improvement and will advise of the right of appeal. A copy of this written warning will be kept by the principal/director but it will be disregarded for disciplinary purposes after a minimum period of 12 months subject to satisfactory conduct and performance.

Stage 3 - Final written warning

If there is still a failure to improve conduct or performance is still unsatisfactory, or if the misconduct is sufficiently serious to warrant only one written warning but insufficiently serious to justify dismissal (in effect both first and final written warning) the vice principal shall determine that a FINAL WRITTEN WARNING will normally be given to the employee. This will give details of the complaint, will warn that dismissal will result if there is no satisfactory improvement and will advise of the right of appeal. A copy of this final written warning will be kept by the principal/director but it will be spent after a minimum period of 24 months (in exceptional cases the period may be longer) subject to satisfactory conduct and performance.

Stage 4 - Dismissal

If conduct or performance is still unsatisfactory and the employee still fails to reach the prescribed standards, DISMISSAL will normally result. Only the principal can take the action to dismiss. The employee will be provided, as soon as reasonably practicable, with written reasons for dismissal, the date on which employment will terminate and the right of appeal.

4. Gross misconduct

The following list provides examples of offences which are normally regarded as gross misconduct.

a) Serious dishonesty, such as theft of property, deliberate falsification of salary or expenses claims for pecuniary advantage, falsification of any information given in applying for a post and failure to disclose criminal convictions where required to do so.

b) Deliberate refusal to carry out a reasonable, lawful and safe instruction.

c) Wilfully ignoring responsibilities or instructions thereby placing other members of staff and/or students in danger.

d) Gross negligence in failing to attend to or carry out the duties of the post, thereby causing unacceptable loss, damage or injury.

e) Being unfit to perform duties associated with the post as a result of taking alcohol or other drugs.

f) Acts of violence or vandalism in the course of employment.

g) Sexual misconduct at work.

An employee accused of an act of gross misconduct may be suspended from work on full pay, normally for no more than 10 working days, while the college investigates the alleged offence. If, on completion of the investigation and the full disciplinary procedure, the principal is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice.

5. Appeals

An employee who wishes to appeal against dismissal should inform the clerk to the governing body within 10 working days. The disciplinary appeal panel will hear all appeals and their decision is final. At the appeal any disciplinary penalty imposed will be reviewed but it cannot be increased.

Appeals against oral warnings will be heard by the head of department, written warnings by the vice principal, and final written warnings by the principal.

APPENDIX 3: Example of disciplinary code - from a major industrial company

1. Rules

The Company's disciplinary rules are contained in the following documents:

- standing orders,
- conditions of staff employment,
- other notices as posted from time to time.

Copies of these documents are available from the personnel department.

2. Policy

It is the Company's intention that the disciplinary procedure is designed primarily as a means of encouraging and emphasising improvements in an individual's conduct, and not solely as a means of imposing sanctions. The disciplinary procedure of the factory shall be such as to ensure:

(a) that management has the right to take disciplinary action in appropriate cases;

(b) that an employee has the opportunity to answer any complaint made against him/her before disciplinary action is taken;

(c) that any employee who feels that he/she has not been justly treated has the right of appeal up to a senior executive of the Company.

3. Procedure

The following procedure will apply in sequence except in cases of serious misdemeanour when management and supervision will select from the alternatives shown below the most appropriate for the particular breach of discipline.

Persons administering any of the following disciplinary actions must be accompanied by another supervisor and must indicate to individuals that, if desired, a union representative or a colleague being

an employee of the Company, may be present. They must also ensure that the person being disciplined is told precisely the reasons for the disciplinary action and is given every opportunity to state his/her case. At all stages of the procedure, the employee must be informed of the required improvements and any timescale and of the probable consequences of not achieving those requirements.

At the time that the departmental manager is administering the disciplinary procedure, the manager must inform the employee concerned that he/she has the right of appeal against the decision if so desired.

(a) **Formal verbal warning**
To be administered by the departmental manager who will advise the personnel manager of the action taken. The personnel department will be responsible for recording the warning in the employee's personal record file. In the absence of any further endorsement the record of the warning will be destroyed by the personnel department six months following the date of its entry.

The personnel department will notify the departmental manager and the employee concerned when the warning has been deleted from the employee's personal record file.

(b) **Written warning**
To be administered by the departmental manager. He shall inform the employee concerned that an entry will be made to his/her personal record file, and will send under confidential cover to the personnel manager, a copy of the warning on Form DA. A copy of this form shall be handed to the employee. The personnel department shall be responsible for the filing of the warning in the employee's personal record file. In the absence of any further endorsement the warning shall be destroyed by the personnel department six months following the date of its entry, and no record of it shall be retained.

The personnel department will notify the departmental manager and the employee concerned when the warning has been deleted from the employee's personal record file.

(c) **Dismissal**

(i) To be administered by the departmental head. This action is for grave/persistent breaches of discipline and should only be used as a last resort. The departmental head should report the circumstances to his/her executive manager and should state the reason for the dismissal on the termination document, which should be forwarded to the personnel manager for the entry of a summary of the report in the employee's personal record file.

(ii) Summary dismissal can be administered without previous warning in the case of gross misconduct. Such misconduct includes illegal acts, falsification of records (including clocking cards), theft from the Company or its employees, assault on another employee, drunkenness, blatant disregard of safety regulations, and refusal to carry out reasonable instructions.

This list is not exhaustive or exclusive.

4. Appeals

In the case of the employee wishing to appeal against the disciplinary action, arrangements should be made for the employee to see the executive superior of the person who took the disciplinary action concerned. At this interview the personnel manager or his/her representative should be present. The employee may be accompanied by his/her union representative or a colleague of his/her choice provided that person is also an employee of the Company.

5. General

(a) To ensure equity of treatment between different departments, departmental managers should consult the personnel manager before taking serious disciplinary action.

(b) It is important that managers give prompt hearing to any appeal.

(c) Where an appeal against dismissal has been unsuccessful, the employee can require to have the decision confirmed to him/her in writing.

(d) A dismissed employee will be provided, on request, with a written statement giving particulars of the reasons for dismissal.

(e) In the event of incidents occurring during overtime or night shift which may necessitate disciplinary action the supervisor must ensure that the employee concerned has the opportunity to be properly represented and should, if necessary, suspend him/her until the necessary arrangements can be made during normal working hours for full investigation and representation.

(f) In the event of disciplinary action to be taken against a senior union representative, no more than a verbal warning should be given until the matter has been discussed with the appropriate full-time officer.

APPENDIX 4:
Discipline, suspension and dismissal procedure for college staff

This example procedure was written originally with substantive advice from NATFHE, for use with college lecturers, and has been revised to fit the post-ERA context.

1. Introduction

1.1 These procedures have been prepared after consultation between the college and the recognised trade unions.

1.2 The procedures apply to all staff employed by the college in the provision of further and adult education.

1.3 It is recognised by the parties to this agreement that discipline is necessary for the conduct of college affairs and for the safety and well-being of its employees. It is equally the intent of the parties that disciplinary action be considered and applied equitably and be primarily regarded as a means to improved performance rather than a method whereby sanctions are imposed. It should be the normal procedure of management to encourage and assist staff in attaining a better performance and fulfilment of their duties. When a member of staff commits minor infringements of the established standards of conduct they may in the first instance be given informal warnings by their next-in-line managers for the purpose of improving such conduct.

1.4 All reasonable steps will be taken to establish the substance of complaints or allegations against a member of staff before any of the sanctions or other disciplinary steps envisaged can be considered justified. It should be noted that, as is indicated in paragraph 3.1 below, suspension is not in itself a form of disciplinary action.

1.5 The provision contained within these procedures should be read in conjunction with the Instrument and Articles of Government and collective agreements made

locally between the college, the LEA and the recognised unions.

2. Misconduct

2.1 The examples which follow are not intended to be either inclusive or exhaustive and it must be recognised that in certain cases behaviour shown as misconduct would constitute gross misconduct or vice versa depending on the circumstances and the proper expectations from a professional officer.

Certain actions are so serious that the first occurrence would probably result in dismissal. Examples of such gross misconduct are as follows: theft and other offences of dishonesty, sexual offences, assault, falsification of timesheets, subsistence and expenses claims, malicious damage to the college's property, unauthorised removal of the college's property, gross negligence, serious breaches of safety regulations endangering or likely to endanger other people, falsification of qualifications or references or misrepresentations of experience which is or are a requirement of employment, wilful failure to obey reasonable instructions. Examples of misconduct which could lead to dismissal but which would normally be preceded by warnings or other measures include constant poor time-keeping, abusive and bad language, wilful and unsatisfactory performance of duties, wilful neglect of the college's property, offensive behaviour.

2.2 Prior to any disciplinary hearings under this section being undertaken, the person invoking the procedure should conduct a preliminary investigation into any allegation of misconduct.

2.3 In cases where gross misconduct is alleged, it may be inappropriate for a complaint to be considered under the provisions of Section 2.4 of these procedures. In such cases the matter will be referred direct to the college governing body by the principal under the provisions of Section 4 of these procedures.

2.4 When a formal disciplinary hearing is considered necessary, the responsibility for invoking the procedures in this section shall normally be either (a) or (b) as follows. In deciding on the course of action to be followed account should be taken of the provisions in paragraph 2.9.

(a) For actions of alleged misconduct:

Grade of staff involved	**Invoking officer**	**Disciplinary authority**
Officer (APT&C)	Section head	Chief admin officer (CAO)
Manual workers	Section head	Chief admin officer
Teacher	Head of school	Assistant principal

(b) For actions of alleged serious misconduct or gross misconduct:

Grade of staff involved	**Invoking officer**	**Disciplinary authority**
Officer (APT&C)	CAO	Vice principal
Manual worker	CAO	Vice principal
Teacher	Assistant principal	Principal
Head of school/ assistant principal	Vice principal	Principal
Vice principal/ CAO	Principal	Governors disc. panel
Principal	Chairman of governors	Governors disc. panel

In the absence of the named invoking officer at each grade, the invoking officer for any grade higher shall be responsible for invoking the procedures.

In the case of the principal as the grade of staff involved the matter will be dealt with in

accordance with Section 4 of these procedures.

2.5 Following the investigation under 2.2 above, where a formal disciplinary hearing is considered warranted, arrangements shall be made for the hearing by the appropriate disciplinary authority.

2.6 Where this hearing is conducted by the college principal or vice principal a relevant profressional person shall be consulted and may offer such advice and assistance as the principal or vice principal feel necessary. The principal shall be under a duty to consider any advice given or assistance offered before coming to his/her decision.

2.7 The member of staff shall be notified in writing and given a minimum of five working days notice that the hearing is to be held under the provisions of this procedure and of the entitlement to be accompanied by a workplace friend or a trade union representative. Full details of the complaints, including copies of relevant written allegations and/or adverse reports, shall be made available to the member of staff at this time.

2.8 The member of staff shall be given a fair hearing which will be conducted in accordance with the format set out in Appendix A to this agreement.

2.9 (a) At the conclusion of the hearing under 2.4 (a) the assistant principal or other officer may decide that no disciplinary action is needed, or:

(i) issue a reprimand,
(ii) issue a recorded oral warning,
(iii) issue a written warning.

(b) At the conclusion of the hearing under 2.4 (b), the principal (or other officer) may decide that no disciplinary action is needed, or:

(i) issue a reprimand,
(ii) issue a recorded oral warning,
(iii) issue a written warning,
(iv) issue a final written warning,
(v) dismiss the member of staff.

In all cases the action taken will be determined by the seriousness of the charges found, due regard being paid to any previous disciplinary action in respect of the individual which is currently on his or her record. Thus the stages above do not mean that three warnings must always be given before dismissal is considered. There may be occasions when, depending on the seriousness of the misconduct involved, it will be appropriate to enter the procedure at the stage of the written warning or final written warning. There may also be occasions when dismissal without notice is applicable.

2.10 In the event of a decision that no disciplinary action is needed all record of the matter will be removed from the member of staff's file.

2.11 The principal (or other disciplinary authority) will confirm the decision to the member of staff in writing within 10 working days of the hearing with, where relevant, an indication of any steps which the member of staff is expected to take, advice to the member of staff upon the consequences of disregarding the warning and a reminder of the member of staff's right to appeal.

3. Suspension

3.1 Suspension is not in itself disciplinary action but may be appropriate, depending on the circumstances, whilst the facts of a possible disciplinary matter are being investigated or while the form of disciplinary action is being considered. When, upon allegation of gross misconduct or for any other urgent cause, the principal or chairman is of the opinion that the alleged offence is of such a nature that the member of staff's continuing attendance at the college cannot be justified, the member of staff shall be suspended by the appropriate disciplinary authority identified in paragraph 2.4 above.

3.2 Payment of full salary during suspension shall be regarded as the normal procedure from which departure shall be made only when the principal or the chairman of the governing body expressly decides that there is a compelling reason for so doing.

3.3 When payment of full or part salary is withheld, the member of staff shall be notified

immediately and may exercise, forthwith, a right of appeal against the decision only to the principal or the chairman, being accompanied by a trade union representative or workplace friend. This right of appeal must be exercised within 10 working days of the member of staff being notified of the decision.

3.4 Any decision to suspend must be reported to the chairman and the governing body in accordance with the Articles of Government.

4. Governing body hearings, including gross misconduct

4.1 Where the matter is referred to the governing body, the clerk to the governing body will make the necessary arrangements for a hearing by the governors disciplinary or appeals sub-committee, in accordance with the provisions and procedure set out in Appendix A to this agreement.

4.2 The member of staff will be given at least 10 working days' notice of the date of the hearing and be informed of his/her right to be accompanied by a workplace colleague or a trade union representative. At the same time, the member of staff will receive, in writing, details specifying in full any charge, complaint or adverse report relating to conduct or capacity which is to be taken into account, a copy of the investigating officer's report and copies of any other statements or relevant documents which are to be submitted to the disciplinary or appeal sub-committee.

4.3 Following the hearing, the governors disciplinary or appeal sub-committee may decide that no disciplinary action is needed, or:

(a) issue a reprimand;

(b) issue a written or final written warning and indicate the consequences for the member of staff if there is subsequent need for recourse to the procedures;

(c) authorise an offer of a transfer to another post at the same or lower grade within the establishment, or secondment (in appropriate circumstances and having regard in particular to the terms of the member of staff's contract);

(d) withhold a salary increment;

(e) dismiss the member of staff.

4.4 Before making any decision the governing body's sub-committee shall consult the chief education officer who must then offer such advice as he/she or the governing body deem necessary. The governing body committee shall consider such advice whether given at their request or not.

4.5 The clerk to the governors shall confirm the decision of the governors disciplinary or appeals sub-committee to the member of staff in writing within 10 working days of the date of the decision.

5. Appeals

5.1 At all stages the member of staff will be informed, in writing, of his/her rights of appeal.

5.2 There shall be one right of appeal only as follows.

(a) The right to an appeal against a decision of the assistant principal (or other officer) under paragraph 2.9(a) shall be to the principal in accordance with paragraph 5.3.

(b) The right to an appeal against a decision of the principal (or other officers) under paragraph 2.9(b) shall be to the governors disciplinary appeal sub-committee in accordance with paragraph 5.4.

(c) The right to an appeal against a decision of the governors disciplinary sub-committee under paragraph 4.3 shall be to the appeal sub-committee of the governing body in accordance with paragraph 5.6.

5.3 If the member of staff is of the opinion that the decision of the assistant principal under paragraph 2.9(a) was unjustified he/she may appeal to the principal. The member of staff shall submit a written notice of appeal outlining the terms of the appeal to the principal within

14 working days of receipt of confirmation of the decision. The principal shall arrange to convene a meeting to consider the matter. Not later than five days before the date of the meeting the assistant principal shall prepare a written reply to the member of staff's notice of appeal and shall forward this document to the principal.

5.4 If the member of staff is of the opinion that the decision of the principal under paragraph 2.9(b) was unjustified he/she may appeal to the governing body's appeal sub-committee. The member of staff shall submit a written notice of appeal outlining the terms of the appeal to the clerk to the governing body and to the principal within 14 working days of receipt of confirmation of the decision. The clerk to the governing body shall within 10 days of the receipt of the notice of appeal notify the chairman of the governing body and shall arrange to convene a meeting of the governing body's sub-committee to consider the matter. Not later than 10 days before the date of the meeting the principal shall prepare a written reply to the member of staff's notice of appeal and shall forward this document to the clerk to the governing body.

5.5 The clerk shall ensure that members of the governing body's sub-committee receive both the notice of appeal and the principal's written reply thereto not later than five days before the date of the meeting. The meeting of the sub-committee shall be conducted in accordance with the procedures set out in Appendix A.

5.6 If the member of staff is of the opinion that the decision of the governors disciplinary sub-committee under paragraph 4.3 is unjustified, he/she may appeal to the governors appeal sub committee. The appeal will be conducted by way of re-hearing under the provisions and procedures referred to in Appendix A.

5.7 The appeals sub-committee may confirm, vary or dismiss the decision of the governors disciplinary sub-committee, and may wish to bear in mind the options set out in paragraph 4.3 above, and additionally, the possibility of the transfer of the member of staff to another post.

5.8 The decision of the appeals sub-committee will be final but, in the event of a decision to dismiss, shall be without prejudice to the member of staff's right of application to the industrial tribunals.

5.9 Whether or not the member of staff is dismissed, it shall be for the appeals sub-committee to decide whether the salary withheld in whole or in part is to be reimbursed in respect of the period of suspension. Only in very exceptional circumstances will such salary be withheld in the event of the member of staff not being dismissed.

5.10 As an alternative to exercising the right of appeal the member of staff may except in the event of dismissal exercise the right to have his/her written statement of dissent and/or explanation included on the files.

6. General

6.1 All formal warnings shall normally remain in force and on the member of staff's file for 12 months. However, a longer period may be imposed for written warnings subject to the nature of the offence and the type of disciplinary action decided upon. In such an event, the member of staff will be informed in writing and the longer period imposed will be specified. At the end of the period during which a warning remains in force, all records will be disregarded in relation to any subsequent disciplinary action.

6.2 The disciplinary and appeals bodies of the governors under these procedures shall include provision for a staff governor. Any hearing shall not be invalidated by the non-filling or non-attendance of the place allocated to the staff governor.

6.3 Proceedings in disciplinary and appeal hearings shall remain confidential until a final decision has been taken.

6.4 Disciplinary action, other than a reprimand or formal oral warning, against an accredited representative of a recognised trade union will not be undertaken until the circumstances of the case have been discussed by a representative of the college with a full-time official of the trade union.

6.5 Upon suspicion that a member of staff may have committed a criminal offence connected with his/her employment, the principal shall report the matter to the chairman of the governing body. If there are reasonable grounds for suspecting such an offence, the principal will, after consultation, refer the case to the police if it is not already the subject of police proceedings or investigations.

6.6 If a member of staff is convicted of a criminal offence, whether connected with his/her employment or having a bearing upon his/her employment, the matter may be the subject of disciplinary action in accordance with these procedures. Any disciplinary charge should relate to member of staff's position as an employee and should precede or run concurrently with any criminal hearing unless the principal/chairman expressly decides that there is a compelling reason for not so doing.

7. Interpretation

7.1 For the purposes of these procedures the following expressions shall have the meanings given below:

a. Member of staff: where a context so requires will include full-time, associate, part-time, permanent or temporary post holders at the college;

b. Principal: may include an officer of the College nominated by the principal to act on his/her behalf;

c. Working days: days on which the College's offices are open;

d. Representative: a trade union representative or fellow employee of their choice as identified in the ACAS Code of practice.

APPENDIX A: Discipline, suspension and dismissal procedures for college staff

1. The following procedure will normally apply to formal interviews conducted under paragraph 2.6 of the agreed disciplinary procedure. The principal will be responsible for determining the procedure for the conduct of the interview and will have regard to the following procedures.

2. The principal will repeat to the member of staff the allegations being made against him/her.

3. The invoking officer will present his/her case in support of the allegations.

4. Witnesses may be called to support the case and will be questioned as follows:-
   (a) by the invoking officer
   (b) by the member of staff and/or their representative
   (c) by the principal
   (d) by the invoking officer in re-examination.

5. The member of staff or representative will present the defence.

6. Witnesses may be called to support the case and will be questioned as follows:
   (a) by the member of staff and/or representative
   (b) by the invoking officer
   (c) by the principal
   (d) by the member of staff and/or his/her representative in re-examination.

7. The invoking officer will summarise the case against the member of staff.

8. The member of staff or his/her representative will summarise the case for the defence.

9. The principal will call on both parties to withdraw but may recall either party in the presence of the other for a point of clarification.

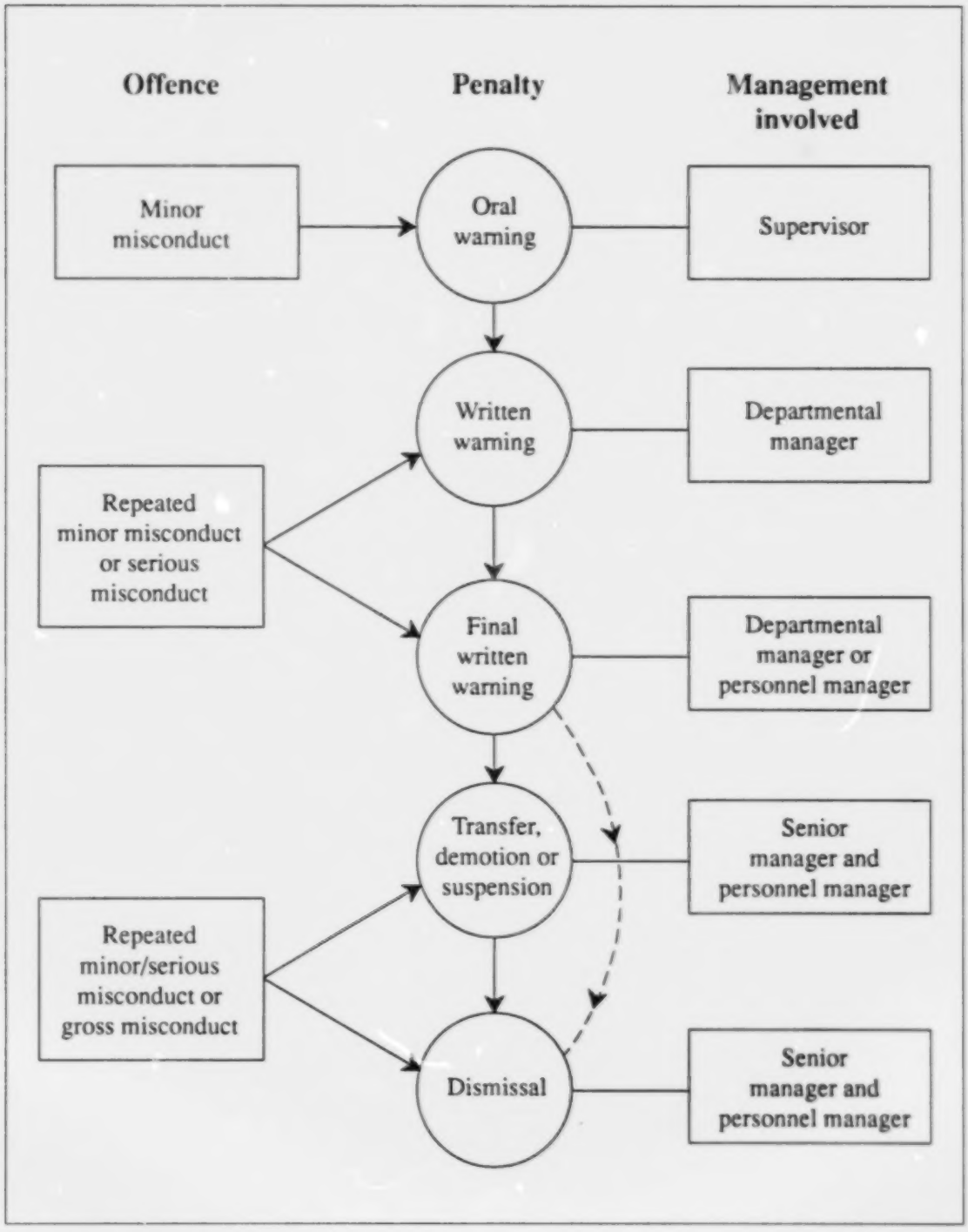
10. The principal will recall both parties and inform them of his/her decision.

11. The principal will then confirm the decision in writing within 10 days.

12. The principal may adjourn the interview before making a decision, if further investigation is warranted.

Note: The same format and procedure will apply in cases where the governing body is the disciplinary authority.

APPENDIX 5:
Outline disciplinary procedure



Source: Torrington, D and Hall, L (1987) **Personnel management: a new approach**
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APPENDIX 6: Reviewing your disciplinary procedure

Disciplinary procedures need to be user-friendly, that is they should be clear to both those presenting and those charged with hearing any allegations. This is likely to be particularly so if one or more of those concerned were not involved in drafting the procedure.

Experience suggests that writing such a document is far from easy, particularly where it tries to respond to the spirit and intent as well as the technicalities. It is likely, therefore, that use will point to opportunities for on-going refinement. The following questions may prove helpful in reviewing existing provisions before they are next tested in earnest.

1. What is the purpose of the procedure? If stated, is it to seek improvement, to set and maintain standards or punitive?

2. Who does it relate to? Academic, or APT&C and/or manual staff or all employees of the college?

3. Is it supported by college disciplinary rules?

4. Was it discussed, negotiated or presented to the recognised trade union(s) and/or the staff association? Is this identified in the document?

5. Who can hear a charge of gross misconduct against staff other than those designated in the articles as the senior managers?

6. Who hears the appeal if a charge of gross misconduct is found?

7. Who administers/clerks and who can advise at a hearing or an appeal?

8. How is gross misconduct identified, are illustrations given and if so is their status clear?

9. Who will hear a charge of misconduct, and who will hear the appeal should there be one? Who will advise and clerk at each stage?

10. In identifying who will do what is there scope for confusion or conflict with natural justice?

11. Is the appeal to be a re-hearing of the charge and the evidence or will it be required to focus only on the specific grounds of the appeal?

12. What are the time periods set for hearings and appeals? Is there provision for change by mutual agreement?

13. Is guidance given if one side fails to agree a date for a hearing within the set time, or fails to attend?

14. How is a friend or representative defined? (As in **Discipline at work: the ACAS advisory handbook** or the Silver Book?)

15. Are staff represented on any panel? What is the provision should they choose not to be represented?

16. What sanctions are provided?

17. How are any time limits on sanctions treated? Do they allow the deciding body discretion?

18. Are any special cases referred to, e.g. trade union officials, drinking, incidents off the college premises, outside working hours?

19. How does the procedure relate to matters of:
    - competence and marginal performance,
    - long-term and intermittent absence?

20. Is there any reference to the machinery for making changes/improvements in the future?

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